IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 1820 of 2007()

ST.750/2007 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

SYAM S NAIR, AGED 25,
S/O P.S.SANKARANKUTTY, LAXMI NILAYAM,
MUPPATHADAM, KADUNGALLOOR VILLAGE, ERNAKULAM.

BY ADV. SRI.R.PADMARAJ
SRI.N.P.SETHU
SRI.K.M.VIKAS

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY
HOME SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE S.I OF POLICE, CITY TRAFFIC,
KOCHI CITY, THRIPUNITHURA WING,
ERNAKULAM DISTRICT.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1820 OF 2007

Dated this the 8th day of June, 2007

ORDER

The petitioner faces indictment for the offences punishable under Secs.184 and 185 of the Motor Vehicles Act. The petitioners has come before this Court raising a grievance that the allegation under Sec.185 of the M.V. Act is unjustified and is not liable to be sustained. The learned counsel for the petitioner points out that there is no contention even that the petitioner was under the influence of alcohol. The worst allegation against the petitioner is that there was smell of alcohol. There is no contention that a breath analyser test was conducted. There is no contention that the petitioner had refused to take a breath analyser test or a blood test. The learned counsel for the petitioner submits that if the charge were only under Sec.184 of the M.V. Act, the petitioner can take the risk of even pleading guilty. Unnecessarily, grave

charge under Sec.185 of the M.V. Act has been raised against the petitioner. This, in short, is the contention. The learned counsel for the petitioner submits that in the light of the decision in **Shibu v. State of Kerala** (2006 (4) KLT 747), in any view, in the absence of the breath analyser test and in the absence of an allegation that the petitioner refused to take breath analyser or blood tests, the charge under Sec.185 of the M.V. Act must fall.

2. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that in the light of the decision in **Shibu v. State of Kerala** (2006 (4) KLT 747), the State does not want to prove the allegation under Sec.185 of the M.V. Act. That submission is taken note of and recorded. The learned Magistrate need proceed against the petitioner only for the offence under Sec.184 of the M.V. Act now.

3. This Crl.M.C. is, accordingly, allowed in part.

Sd/-

(R. BASANT, JUDGE)

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//true copy// **P.S. To Judge**